IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE TWENTY FIFTH DAY OF AUGUST TWO THOUSAND AND TWENTY TWO

PRESENT
THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

SPECIAL APPEAL NOS: 19 OF 2002 AND 20 OF 2003

SPECIAL APPEAL NO.19 OF 2002:

Appeal under Section 23(1) of the APGST Act, against the Order dated 19/02/2002 made in Pro. CCT's Ref.L.III(2)/9/99-1, on the file of the Commissioner of Commercial Taxes, Andhra Pradesh

Between:

M/s. K.P.Steels Ltd., rep. by its Managing Director Mr. R.K.Gupta

...APPELLANT

AND

The Commissioner of Commercial Taxes, A.P., Nampally, Hyderabad.

...RESPONDENT

For the Petitioner : SRI S.DWARAKANATH, Senior Counsel for SRI P.SRINIVASA REDDY, Advocate

For the Respondent : SRI K.RAJI REDDY, SPECIAL SC FOR COMMERCIAL TAXES

SPECIAL APPEAL NO.20 OF 2003:

Appeal under Section 23(1) of the APGST Act, against the Order dated 19/02/2002 made in Pro. CCT's Ref.L.III(2)/9/99-II on the file of the Commissioner of Commercial Taxes, A.P.

Between:

M/s. K.P.Steels Ltd., rep. by its Managing Director Mr. R.K.Gupta

...APPELLANT

AND

The Commissioner of Commercial Taxes, A.P., Nampally, Hyderabad.

...RESPONDENT

For the Petitioner : SRI S.DWARAKANATH, Senior Counsel for SRI P.SRINIVASA REDDY, Advocate

For the Respondent : SRI K.RAJI REDDY, SPECIAL SC FOR COMMERCIAL TAXES

The Court delivered the following : COMMON JUDGMENT

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

SPECIAL APPEAL Nos.19 OF 2002 AND 20 OF 2003

COMMON JUDGMENT: (Per Hon'ble Dr.SA,J)

These appeals are filed by the appellant aggrieved by the orders, dated 19.02.2002, passed in CCT's Ref.L.III(2)/9/99-II and CCT's Ref.L.III(2)/9/99-I, by the respondent-Commissioner of Commercial Taxes, Hyderabad, whereby, the orders of the Appellate Deputy Commissioner and the consequent orders of the assessing authority were set aside restoring the original orders of the assessing authority.

2. Heard Sri S. Dwarakanath, learned Senior Counsel appearing for the appellant in both the appeals; Sri K. Raji Reddy, learned Special Standing Counsel for Commercial Taxes, appearing for the respondent in both the appeals, and perused the record.

3. The case of the appellant-M/s.K.P.Steels Limited, Secunderabad, is that it is a re-roller manufacturing tor steel. It is a registered dealer on the rolls of the Commercial Tax Officer, Ramgopalpet Circle, Secunderabad. For the assessment years 1996-97 and 1997-98, the Commercial Tax

Officer passed provisional assessment orders of even date, dated 27.01.1998, levying tax on the turnover of Rs.3,75,96,307/- and Rs.79,71,300/-, respectively, treating the appellant as liable to pay tax under Entry 2-A (iii) of the third schedule to the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'the Act'), for the purchase of defective blooms. Aggrieved by the provisional assessment orders passed by the Commercial Tax Officer to the extent of levying tax on the quantities of defective blooms resold to other re-rollers in the State, the appellant preferred appeals before the Appellate Deputy Commissioner, Punjagutta Division, Hyderabad. The appellate authority by common order, dated 28.02.1998, observing that the appellant, a re-roller, sold the goods in question to other re-rollers, who admitted the liability at their hands by paying the tax due thereon, and that the goods in question are declared goods, which cannot be subjected to tax more than once, remanded the matters to the assessing authority with a direction to re-do the assessments. Thereafter, the Commercial Tax Officer passed final assessment orders for the years 1996-97 and 1997-98 *vide* orders, dated 02.06.1998 and 31.03.2001, without

levying tax on the defective blooms sold by the appellant to other re-rollers in the State. While so, the respondent issued show-cause notice, dated 18.12.2001, to the appellant proposing to revise the common order, dated 28.02.1998, of the Appellate Deputy Commissioner and restore the provisional assessment orders of the Commercial Tax Officer. The appellant filed objections, dated 20.01.2002, before the respondent. The respondent, however, by the impugned orders, dated 19.02.2002, had set aside the common order, dated 28.02.1998, of the appellate authority and the consequential orders, dated 02.06.1998 and 31.03.2001, of the assessing authority and restored the original orders of the assessing authority, holding that the appellant as a re-roller by status is *per se* liable to discharge the tax on entire purchases of defective blooms irrespective of the fact whether it had consumed such goods or resold to others. Aggrieved by the said orders, dated 19.02.2002, the appellant preferred the present appeals.

4. As seen from the material placed on record, the appellate authority, while dealing with the subject matter, has examined the applicability of the mandate given under Entry

2-A of third schedule to the Act and was pleased to pass a detailed common order on 28.02.1998. The operative portion of the said common order reads as follows:

> "In the present case also, the goods in question are liable to tax at the point of purchase by a Steel Re-roller and in all other cases at the point of last purchase who buys in the State. The appellants being a Re-roller, sold the goods in question to another Re-roller who admits the liability at their hands by paying the taxes due thereon, as evidenced from the declarations given by them. In view of the facts and circumstances of the case and also in view of the case law referred to above, I find force in the arguments of the appellants as well as their Authorised Representative. In view of the foregoing, I deem it necessary on the part of the Assessing Authority to confirm the fact whether the purchasers paid the taxes due on their purchases of Defective blooms before their Assessing Authorities without raising the question of First re-roller or the Second, or not, much less when the fact remains that the purchases by those re-rollers were also within the meaning of the expression "when purchased by a Steel re-roller at the point of purchase" occurring in the Entry. In the circumstances, I deem it just and proper to set-aside the impugned assessments made on the disputed turnovers herein, referred to above in Statement at para-1, and remand the matter back to the Assessing Authority with a direction to re-do the assessments, keeping in view the observations made supra and also keeping in view the goods in question are declared goods which cannot be subjected to tax more than once, in its finality since the financial year of 1996-97 was already over and the financial year of 1997-98 has come to an end, granting necessary relief to the appellants as per law. With this direction, I remand the appeals."

5. In the course of submissions, it is brought to the notice of this Court that as far as the goods used by the appellant is

concerned, it has paid the tax and as far as the goods sold by it to another dealer, the subsequent purchaser has paid the tax. According to the appellant, tax was paid in total in relation to the purchase made by it. The appellate authority, while dealing with the subject appeal, was pleased to examine the same and took a similar view.

6. Here, it is appropriate to extract Entry 2-A of third schedule to the Act, which reads as follows:

Third Schedule

Declared goods in respect of which a single point tax only is leviable under Section 6

Entry no.	Description of goods	Point of levy	Rate of tax
1. xxx 2. xxx			
2-A	Iron and Steel scrap, that is to say – (i)Iron scrap, cast-iron scrap, runner scrap and iron skull scrap. (ii)Steel melting scrap in all forms including steel skull, turnings and borings. (iii) Defectives, rejects, cuttings or end pieces of any of the categories of items (i) to (xv) of Entry 2.	When purchased by a steel re-roller or electric arc furnace or electric furnace-cum-reroller or induction furnace, or mini steel plant-cum-reroller in the State at the point of purchase by said dealers and in all other cases at the point of purchase by the last dealer who buys in the State.	4 paise in the rupee

7. Entry 2-A of third schedule to the Act envisages collection of tax on iron and steel scrap. It is pertinent to state that the declared goods cannot be subjected to collection of tax more than once. As per Entry 2-A of third

schedule to the Act, the point of levy of tax is when purchased by a steel re-roller or electric arc furnace or electric furnace-cum-re-roller or induction furnace, or mini steel plant-cum-re-roller in the State, at the point of purchase by said dealers and in all other cases at the point of purchase by the last dealer who buys in the State. When a clarification is sought as to whether a dealer is liable to pay tax on the scrap purchased and resold by it, the Government issued Memo No.23978/CT.II/94-1, dated 18.09.1994. The operative portion of the Memo reads as follows:

> "Government have examined the matter in consultation with the Law Department. According to the entry against Item 2-A in the Third Schedule to the APGST Act, 1957 tax shall be leviable at the point of first sale in the State when iron and steel, etc., purchased by an electric arc furnace unit or an induction furnace unit in the State at the point purchase by such unit. As the above entry places the incidence of tax on the unit of consumption or scrap for recycling it into finished product, the dealer has to pay the tax only on the scrap used by the electric furnace unit or induction furnace unit, but not on the scrap purchased and resold in which the incidence is shifted to the last purchaser."

From the above extracted portion, it is clear that the dealer has to pay tax only on the scrap used by it, but not on the scrap purchased and resold by it, in which the incidence is shifted to the last purchaser. However, the question raised by the appellate authority i.e., whether the total tax in respect of

the goods purchased by the appellant was paid or not, needs determination. Therefore, the appellate authority remanded the matters to the assessing authority. In view of these circumstances, the impugned orders are liable to be set aside.

8. Accordingly, the Special Appeals are allowed and the impugned orders, dated 19.02.2022, passed in CCT's Ref.L.III(2)/9/99-II and CCT's Ref.L.III(2)/9/99-I, by the respondent-Commissioner of Commercial Taxes, Hyderabad, are set aside. Consequently, the common order, dated 28.02.1998, passed in Appeal No.P/359/97-98 and Appeal No.P/358/97-98 by the Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad, is restored.

Miscellaneous Petitions, if any, pending in these appeals shall stand closed. There shall be no order as to costs.

Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Commissioner of Commercial Taxes, Telangana, Hyderabad. (with records)
2. The Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad.
3. One CC to Sri P.Srinivasa Reddy, Advocate [OPUC]
4. One CC to Sri K.Raji Reddy, Standing Counsel for Commercial Taxes [OPUC]
5. Two CD Copies

Kj.

HIGH COURT

DATED:25/08/2022

JUDGMENT

SPECIAL APPEAL Nos.19 of 2002 and 20 of 2003

SPECIAL APPEALS ALLOWED.

(7) pr

4/2/23